

Decision 90 05 062 MAY 22 1990

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Dan Bates,)
)
 Complainant,)
)
 vs.)
)
 Pacific Gas and Electric Company,)
)
 Defendant.)

Case 88-05-035
(Filed May 16, 1988)

Dan Bates, for himself, complainant.
Mark E. Brown, Attorney at Law, for Pacific
Gas and Electric Company, defendant.

O P I N I O N

Background

Complainant Dan Bates disputes a retroactive bill of \$3,864.79 which he received from Pacific Gas and Electric Company (PG&E), defendant. PG&E billed Bates \$1,734.59 for a period of three years before its discovery of alleged energy diversions and \$2,130.20 for earlier diversions.

Bates alleges that he did not tamper with his meter. PG&E's answer to the complaint stated the amount of its backbilling; admits having received a settlement offer from Bates; denies threatening Bates about his bill; avers that unmetered electric service was used at Bates' residence; and requests that no relief be granted to Bates.

Since the complaint did not state the amount at issue, it was docketed under the Expedited Complaint Procedure (ECP).¹ By

¹ See Public Utilities Code §§ 1701, 1702.1, and Rule 13.2 of the Commission's Rules of Practice and Procedure.

Administrative Law Judge's (ALJ) ruling the complaint was redocketed under the regular procedure, since the ECP is designed to resolve billing disputes not in excess of \$1,500. The ruling also stated each of the parties could be represented by an attorney at law and a hearing reporter would be at the hearing.

Summary of Decision

The evidence clearly establishes that the electric meter serving Bates was tampered with, resulting in underrecordings of consumption and underbillings for Bates' electric service. PG&E established the period of meter tampering. The procedure used by PG&E to estimate the amount of backbilling is reasonable based on the information available to it. However, the amount of the backbilling will be reduced to give consideration to extra electric use to provide for Bates' grandfather's needs during his terminal illness.

Hearing

A hearing was held before an ALJ in Fresno and the matter was submitted. Bates testified for himself; Roy H. Metzler, Jr. testified for PG&E.

Issues

The issues raised for the Commission in this proceeding are:

1. Was there meter tampering on PG&E's electric service for Bates?
2. Is PG&E's backbilling methodology appropriate and is its adjustment reasonable?
3. How can PG&E recover amounts for unbilled electricity?
4. Is any Commission action required on Bates' other allegations against PG&E?

Meter Tampering

Bates denies having tampered with the electric meter serving his home. The summary of Metzler's testimony below clearly shows that tampering had occurred at that meter. Irrespective of who tampered with the meter, any unrecorded electric use would reduce Bates' bills. In his closing statement Bates concedes that tampering had occurred, but he disputes the basis of PG&E's backbilling charges and assumptions.

Metzler is a PG&E revenue protection representative (RPR) who investigates situations where meter tampering may have occurred, takes action to stop such tampering, and assists in recovery of lost revenue. He estimates having investigated 4,000 to 5,000 situations where electric seals had been broken, and it appears that meter tampering had taken place. Roughly 1,000 of those situations involved tampering with facilities to obtain energy which was not being metered or paid for.

Metzler and another RPR investigated a meter reader's report that the outer seal of the electric meter at Bates' home had been cut and fixed to appear as though it was still sealed.

Based on their observations, the RPRs concluded that the conditions described below collectively indicate that meter tampering had been occurring for an extended period of time. Therefore, they removed that electric meter for evidence, installed a new electric meter, and installed a hardened steel outer security ring to secure the new electric meter to the panel. Metzler used the removed meter in his description of tampering in this proceeding as follows:

- "1. The outside surface of the glass meter cover, which is designed to protect the working parts of the meter from dust and dirt, was dusty with fingerprints showing. This was an indication that the glass meter cover had been handled during a relatively recently period of time.

- "2. The outer green murry seal was cut and put back together to appear as though it was still sealed.
- "3. The metal outer retaining ring, which is designed to hold the electric meter in place, would normally contain an accumulation of dust and dirt in the valley formed inside of its U-shaped configuration. The dust and dirt become trapped inside the ring and can only be removed after the ring has been physically removed from the meter. The ring at Mr. Bates' metering facility was clean and completely void of dust and loose dirt. The absence of dust and dirt would indicate that the ring had been opened and closed during a relatively recent period of time.
- "4. The nickel plating that normally covers each of the four copper prongs that protrude from the rear side of the meter showed an extensive amount of wear. This was an indication that the meter had been removed from the meter socket base and reinserted on numerous occasions.
- "5. The inner wire seal, which is designed to secure the glass meter cover to the electric meter, was gone.
- "6. The glass meter cover came off with no effort because the clips, which are designed to hold the glass meter cover tight, were sprung. This was an indication that the glass meter cover had been removed from the meter on numerous occasions."

Metzler further testified that:

- "The only way the wire inner seal on Bates' house could have come off would be by cutting it off; it could not break off.
- "When we turned his meter upside down we noted that there was no inner seal and in fact the glass is very loose. It turns very easily. The reason being that the glass has been taken off of the electric meter so many times that

the clips that lock on the back of the meter have been sprung.

"That shows that the glass had been removed from the meter a lot of times.

"Also, in looking at the wear on the meter prongs, it shows that the electric meter has been removed and reinserted into the electric panel somewhere between 50 and 100 times.

"The way I come to that conclusion is from the number of cases I've had, and also I've conducted tests myself on electric meters to show the amount of wear that it takes to remove an electric meter and insert it into an electric panel.

"So, it's my conclusion that when meter tampering first started, that the electric meter was being removed to divert energy, but at some point in time the meter stopped being removed and the only thing that was being done was taking the outer seal and the outer ring off and then removing the glass and inserting a small object between the disk and nameplate, like a piece of wood or piece of paper, to stop the disk from turning."

PG&E's Backbilling Procedures
and Reasonableness of Adjustments

After finding evidence of electric meter tampering, Metzler analyzed all of Bates' electric billing records from the date Bates established service until the date the meter was replaced to assist in his determination of the amount to backbill Bates for unrecorded consumption.² He also reviewed the

² Bates generally provided consumption readings to PG&E. Otherwise, a meter reader would have to request Bates or his wife to confine their dogs to allow the meter reader to read their electric meter.

consumption record of the prior occupant of Bates' home for indications of prior meter tampering.

The prior customer's monthly use varied from 757 kilowatt-hours (kWh) in the November 1977 billing to 1,104 kWh in the February 1978 billing and his total use for 11 months was about 11,100 kWh. By comparison Bates' use per year during a nine-year period ranged from a low of 4,648 in 1980 to a high of 8,953 kWh in 1983. Metzler felt that a backbill was appropriate since there had been meter tampering and Bates' electrical use was extremely low and insufficient for a family with children where electricity is used for washing and drying clothes, cooking meals, watching television, refrigerating their food, using lights, and for cooling. He compared Bates' recorded use with the consumption of a widow living alone. Metzler cited certain low electrical uses billed to Bates; namely, February 1986 - 286 kWh; July 1981 - 127 kWh; September 1980 - 191 kWh; May 1980 - 204 kWh; and April 1980 - 164 kWh. Bates' November 9, 1979 billing was based on a use of 1,370 kWh. The December 1979 meter reading for Bates was lower than the November 1979 reading. At that time PG&E had not instituted its revenue protection program and its employees apparently believed that they had overbilled Bates by 1,000 kWh in November; therefore, they adjusted their billing and billed Bates for 387 kWh for the two months, an average below Bates' prior monthly uses. In retrospect, Metzler believes the billing for 1,370 kWh was correct and that the meter was either turned upside down to run backwards or that the dial was removed and adjusted. Metzler noted disparities in use on successive months: 677 and 351 kWh for March and April 1979 and 678 and 277 kWh for May and June 1979. The March 1979 billing followed an initial billing of 439 kWh on February 12, 1979. Metzler testified that low reading could have represented a lower than normal use during the Bates' move into their house. Metzler concluded that the April 12, 1979 bill was the appropriate starting point for the backbilling.

In his review Metzler noted five monthly readings, from September 1983 to January 1984, which were indicative of the amount of energy being used by Bates which had not been metered. Bates' use for these months was in line with comparably sized residences and in line with the use of the prior resident at Bates' home. However, Metzler could not be certain that there was no meter tampering during that five-month period. Metzler performed five analyses using PG&E base-year method to develop the backbilling. For the year 1987 he took the consumption of all customers on the same meter route as Bates, and developed the monthly percentage of the annual electric use by all customers on that route. In five separate operations, Metzler used the presumably valid monthly readings with the monthly meter route percentages to develop 11 other monthly uses and an annual use. The annual totals in kWh were 7,698; 8,909; 18,217; 14,864; and 11,396. PG&E used the middle consumption to adjust consumption for backbilling purposes. Based on Metzler's parameters, clerks prepared revised billings based on the adjusted monthly uses and the rates in effect during each billing month. The backbilling adjustment was the summary of the adjusted billings less amounts previously billed. The total backbilling was \$3,864.79 including the amount of \$1,734.59 for the three years prior to verification of meter tampering.

Bates testified that:

1. When he moved into his home he used a small portable refrigerator and a microwave oven and a poorly functioning dishwasher. As a musician, he used electricity for his musical instrumentation and intermittently used four to five tube-type amplifiers for band rehearsals at his home. He also used electricity for lighting, television sets, radios, and other household appliances. In addition, he used an evaporative cooler. His use under those conditions was 677 kWh for the month ending March 14, 1979.
2. When he went out of town for any length of time on a musical engagement he and his

wife would often carry the refrigerator and microwave with them to prepare their meals in hotel rooms.

3. He did his laundry at a laundromat or at his parents' home.
4. They spent a great deal of time at his parents' home for many years.
5. In 1980, they had a baby and they purchased a used refrigerator, dishwasher, stove, washer, and dryer for their home.
6. Subsequently, there were occasions when he traveled to out-of-state jobs and other times when his family traveled.
7. In January 1983, Bates' ill 86-year old grandfather had to be moved from an apartment because his doctors did not feel he could live alone; he moved into Bates' home and lived there until his hospitalization and death. During that period, it was necessary to provide extra appliances for the use of his grandfather: an 8-cubic foot refrigerator, a box heater, a box fan, a 19-inch television, a double-sized electric blanket, an electric clock, an electric wheel chair which was charged weekly, and two lamps. They washed and dried an extra load of laundry for his grandfather weekly. But he discontinued holding rehearsals at home to avoid disturbing his grandfather.
8. His wife's teenage brother lived with them for six or seven months in 1986. They purchased a new washer and dryer in 1986; replaced their roof and their evaporative cooler, and purchased a wood-burning stove in 1987. The wood stove would cut down on his use of a heater fan.
9. A sample of five of his neighbors living on the same street and in similar type homes showed a wide diversity of use in 1987.
10. He is a frugal user of electricity; in fact, after installation of the special

locked meter his usage declined. PG&E did not look at his manual defrost refrigerator but assumed an excessive energy use to operate an automatic defrost refrigerator. He also submitted a copy of a PG&E publication showing that a post-1980 refrigerator uses 40 kWh per month; a comparable frost-free refrigerator uses 100 kWh per month. PG&E unfairly based its higher estimates on his increased electrical use to provide for his grandfather.

11. He prepared a July 1988 use summary showing his consumption and those of five neighbors on the same street as his residence along with a listing of their gas and electric appliances and the frequency or extent of that appliance use to show that there was a large diversity in their respective consumptions. His use was 376 kWh; his neighbors used from 758 to 1,662 kWh. The two highest users used a chiller type of air conditioning; the second highest user also has a manual defrost refrigerator. A plot of nine years of his total consumption between January and July shows that his consumption after the meter change was less than for the other eight years. In addition he used PG&E's percentage of monthly use of electricity on the meter route including his home to redistribute his recorded consumption. That redistribution did not differ from his recorded annual use.

Discussion

Because PG&E's study uses recorded consumption for five consecutive months which appeared to be in line with comparable neighborhood use, the issue of whether Bates' connected load could reasonably use all of measured electrical consumption on his meter does not arise. However, we expect PG&E to supply that load information or explain why it could not obtain it in future complaints of this type. If the meter is operable, PG&E should have tested its accuracy, whether or not it was requested by a

customer who is involved in a case where it believed that meter tampering had occurred. If that meter has not been repaired or put back in service and is operable, PG&E should invite Bates to view the testing and PG&E should change the adjusted backbilling described below if the meter tests in excess of prescribed test limits.

PG&E determined monthly average electric use of customers for 1987 in the homes on the same meter reading route as Bates. The number of customers billed on the route varied from 161 to 164 during that time and averaged 163 customers. Metzler did not believe that customer variation could significantly affect the validity of PG&E's statistical study to determine average percentage of use per month. PG&E's methodology is reasonable, including its use of a larger sample. Bates compared his use with the use of five of his neighbors. Bates' comparable use was below PG&E's average and was below that of any of the neighbor's selected in his sample.

Metzler did not examine Bates' appliances to determine the rated load of the appliances, nor did he explain why he had not done that work to conform with Decision 86-06-035, and of the adopted guidelines in that proceeding. PG&E did not test the tampered meter because Bates did not request it.

PG&E clearly established that there had been tampering of the electric meter serving Bates' residence.

PG&E's calculation of the appropriate backbilling to be charged to Bates for his electrical consumption based on five consecutive months during which Bates' consumption, in line with those of its other customers on the same meter reading route as Bates and in line with the consumption of the prior occupant of Bates' home, is reasonable. The five annual consumptions so determined were 7,698; 8,909; 18,217; 14,864; and 11,396 kWh. PG&E based its backbilling on the middle consumption level of 11,396 kWh.

In many cases, a middle consumption estimate would be reasonable. However, in this instance it is appropriate to consider the added load created in the care of Bates' grandfather. Therefore, we will adopt PG&E's adjustment for the 23-month period from January 1983 to November 1984, inclusive, but use the lower annual level of 8,909 kWh for the remaining adjustment period. PG&E should reduce the adjustment in conformity with this criteria. Copies of the new adjustment should be filed with the Director of Commission Advisory and Compliance Division (CACD) and a copy should be supplied to Bates.

Bates' Allegations

Bates testified that two men came to his door with no identification, identifiable vehicle, or uniform and one of them stated "I am going to change your meter." Metzler testified that Bates had dogs in his backyard. In order to inspect the meter they went to Bates' front door, identified themselves to Mrs. Bates, and asked her to lock up the dogs to permit them to go through the house to check the meter. Metzler believes he was wearing a cap with PG&E printed on it. It is unlikely that PG&E's experienced RPRs would enter the Bates' home without identifying themselves. Nor that Mr. or Mrs. Bates would confine their dogs and permit unidentified "strangers" to go through their house, if the Bates questioned their identity.

The Commission seeks to establish reasonable guidelines for utility-customer relationships. In cases of meter tampering, the Commission is actively seeking utility actions to collect unbilled revenues, including use of the courts to recover funds for diversions exceeding the three-year limitation on adjustments applicable to the Commission.

PG&E employees should physically check out normally inaccessible meters more frequently. There is no evidence of noncooperation by Mr. or Mrs. Bates in acceding to PG&E requests to read their meters. However, if PG&E's employees do not receive

such cooperation, PG&E's Rule 16 A.1.a. quoted below provides a mechanism to avoid such problems:

"RULE No. 16.

"SERVICE CONNECTIONS AND FACILITIES ON CUSTOMER'S PREMISES

"A. Meter Installations and Miscellaneous Service Equipment on Customer's Premises

"1. Meter Installations

"a. Location

"All meters will be installed by the Utility at some convenient place upon the applicant's premises approved by the Utility, normally not above ground-floor level, and so placed as to be at all times accessible for inspection, reading and testing.

"The customer shall, at his own expense, provide a new and approved location for the meter or meters in order to comply with the foregoing whenever the existing meter or meters become inaccessible for inspection, reading or testing by reason of any changes made by the owner or tenant of the premises."

Findings of Fact

1. Bates filed a complaint seeking adjustment of a backbilling of \$3,864.79 which he received from PG&E including \$1,734.59 for the three-year billing period ending December 1987.
2. Bates has not deposited an impound fee with the Commission.
3. Bates established electric service for his residence in 1979.
4. A meter reader noticed evidence of electric meter tampering on October 14, 1987 and took action to have PG&E's revenue protection division confirm his discovery.
5. On December 9, 1987, two PG&E RPR employees made a field investigation and found several items demonstrating that meter tampering had occurred.

6. PG&E's review of Bates' atypical electric consumption pattern established a reasonable starting point for the onset of meter tampering.

7. PG&E's use of five monthly periods in line with comparable residential uses and with the use of the prior occupant of his home is reasonable for calculating adjusted meter readings.

8. For the period between January 1983 and November 1984, Bates' electrical use was increased to provide care for his invalid grandfather.

9. PG&E's use of the middle annual consumption for calculating backbillings is reasonable for the period Bates' grandfather lived with Bates. The next lower annual consumption level should be used for the remainder of the backbilling.

Conclusions of Law

1. Bates benefited from unmetered electricity from March 14, 1979 to December 9, 1987.

2. It is reasonable to bill Bates for unmetered electricity from December 12, 1984 to December 9, 1987.

3. If possible, PG&E should test meters in meter tampering disputes. If possible, Bates' removed meter should be tested within 20 days from the effective date of this order. Bates and/or his representative should be timely advised of the time and place for such testing.

4. The amount PG&E billed the Bates is unreasonable. PG&E should submit a revised billing to Bates and to the Director of CACD within 30 days from the effective date of this decision.

5. PG&E should determine appliance or equipment loads in all future backbilling disputes or explain why it had not obtained such information.

6. PG&E did not violate Commission guidelines related to its contacts with Bates. Therefore, no Commission action on that part of the complaint is warranted.

ORDER

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) shall rebill Dan Bates for unmetered electricity as described above in Findings of Fact 9 and 10 plus the applicable Energy Commission tax for the period from December 12, 1984 to December 9, 1987.

2. PG&E shall make the filing described in Conclusion of Law 4.

3. If possible, PG&E shall test meters in all future meter tampering disputes.

4. Except to the extent granted, the complaint in Case 88-05-035 is denied.

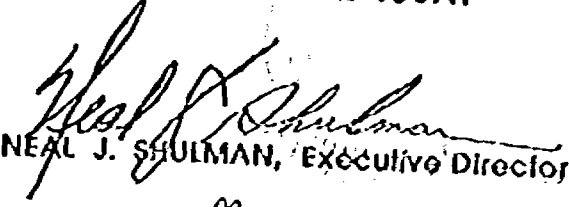
This order becomes effective 30 days from today.

Dated MAY 22 1990, at San Francisco, California.

G. MITCHELL WILK
President
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

Commissioner Frederick R. Duda,
being necessarily absent, did
not participate.

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY


NEAL J. SHULMAN, Executive Director